

FILED

MAR 07 2011

SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB,
SOUTHERN UTAH WILDERNESS
ALLIANCE, NATURAL RESOURCES
DEFENSE COUNCIL, and NATIONAL
PARKS CONSERVATION ASSOCIATION,

Petitioners,

DIVISION OF OIL, GAS AND MINING
and
ALTON COAL DEVELOPMENT, LLC

Respondents,

Kane County, Utah,

Respondent-Intervenors.

ORDER GRANTING MOTIONS
TO POSTPONE FURTHER
CONSIDERATION OF PETITION
FOR AN AWARD OF COSTS AND
ATTORNEY FEES PENDING
RESOLUTION OF APPEAL

Docket No. 2009-019
Cause No. C/025/0005

The parties filed the following briefs concerning the Petitioners' petition for an award of costs and attorney fees:

- Petitioners' Petition For An Award of Costs and Expenses Including Reasonable Attorney Fees, filed on December 21, 2010;
- Division's Motion to Stay Further Consideration of Petition For An Award of Costs and Attorney Fees Pending Resolution of Appeal, filed on January 26, 2011;
- Respondent Alton Coal Development, LLC's Motion to Postpone, filed on January 26, 2011;
- Petitioners' Opposition to Motions to Postpone/Stay Petition for an Award of Costs and Expenses, filed February 11, 2011;

- Respondent Alton Coal Development, LLC's Reply Memorandum in Support of Motion to Postpone, filed on February 16, 2011;

- Joinder of Kane County Utah in Alton Coal Development, LLC's Reply Memorandum Supporting Motion to Postpone, filed February 16, 2011;

- Respondent Alton Coal Development, LLC's Notice of Intent to Petition for Reimbursement of Fees and Costs, filed February 23, 2011.

NOW THEREFORE, the Board, having considered the above-listed briefs, and good cause appearing, hereby sets forth its ruling on the Respondents' motions to postpone.

As noted in the briefs filed by the Division and Alton Coal Development, LLC ("ACD"), the Board will be called upon to decide further claims for fees in this matter following judicial review, likely asserted by both Petitioners and Respondents. It is probable that some of these claims will pertain to cultural resource issues presently under appeal, which issues are related to and somewhat difficult to separate from the cultural resource issue that is the subject of Petitioners' present claim for fees.¹ Furthermore, until the appellate briefs are filed, it is not known to what extent, if any, the cultural resource claim for which Petitioner now seeks fees will be implicated in the arguments before the Supreme Court. As the Division and ACD note in their briefs, addressing all competing claims for attorney fees later in a single proceeding following judicial review will allow the Board to consider all relevant factors at once in making a decision regarding eligibility for, and entitlement to, fee awards.

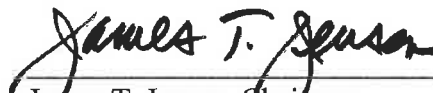
¹ For example, if it were to decide the pending attorney fee claim at this time, and if it were to award fees, the Board would need to determine which attorney hours were spent on the cultural resource claim for which fees are presently sought versus the cultural resource claims under appeal. If the Board defers any decision on fees until after judicial review, that work might be avoided, or might have to be repeated to some degree, depending upon the outcome of the appeal.

For these and other reasons set forth in the briefs of the Division and ACD, the Board will therefore postpone any decision regarding an award of attorney fees until all fee issues can be resolved in a single determination. In this way, the Board will be in a position to avoid the expense and administrative burden of conducting multiple hearings on attorney fee claims and will be able to resolve all conflicting fee petitions at once. The Board therefore grants the motions to postpone filed by the Division and ACD.

The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

ISSUED this 7th day of March, 2011.

Utah Board of Oil, Gas & Mining


James T. Jensen, Chairman

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Order to be mailed by first class mail, postage prepaid, the 7th day of March, 2011, to:

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A handwritten signature in cursive script, reading "Julie Ann Carter", is written over a horizontal line.